

section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

Subpart E—Domestically Produced Cigarettes

SOURCE: 59 FR 28210, June 1, 1994, unless otherwise noted.

§ 723.501 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

FSA. The USDA's Farm Service Agency.

CCC. The Commodity Credit Corporation, an instrumentality of the USDA.

Covered cigarettes. Cigarettes produced in the United States.

Director. Except with respect to references to the National Appeals Division of FSA, the Director of the Tobacco and Peanuts Division, or the successor to the Director.

Domestic assessment use shortage. For any domestic manufacturer, the domestic assessment use shortage shall be, as determined by the Director, the amount, converted to pounds, by which, for the relevant calendar year, domestic tobacco use for covered cigarettes produced by the manufacturer was less than the amount which, as a percentage of total tobacco use for these cigarettes, would have equaled the domestic content nonassessment percentage.

Domestic content nonassessment percentage. The domestic content nonassessment percentage shall be 75 percent unless otherwise specified in this subpart.

Domestic manufacturer. A domestic manufacturer of cigarettes.

Domestic manufacturer of cigarettes. A person who, as determined by the Director, produces and sells more than 1 percent of the cigarettes produced and sold in the United States.

Domestic tobacco. Any quantity of harvested tobacco which has been cultivated, grown, and produced in the United States.

Foreign tobacco. Tobacco that is not domestic tobacco.

Imported tobacco. Any tobacco, including (but not limited to) Oriental and Turkish tobaccos, that is not domestic tobacco and has been entered into the commerce of the United States. Any tobacco that cannot, as determined by the Director, be verified as to its being domestic tobacco shall be presumed to be imported tobacco.

NASS. The National Agricultural Statistics Service, USDA.

Origin category. The categorization of tobacco as either domestic or foreign tobacco.

Price support inventory. The inventory of tobacco which has been pledged as collateral for a price support loan made by CCC through a producer owned cooperative marketing association.

Producer owned cooperative marketing associations. Those associations which by law act as agents for producers for price support loans for tobacco. Those associations for burley and flue-cured tobacco are the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation, or their successors.

Tobacco. Any commodity or substance that is commonly considered to be tobacco in the trade.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco in any form that is not processed and packaged as a ready consumer tobacco product, including, but not limited to, tobacco in the form of leaf tobacco, strips, stems, scrap, and reconstituted, homogenized, and blended tobacco or products (other than consumer-ready products).

USDA. The U.S. Department of Agriculture.

§ 723.502 Domestic tobacco content nonassessment percentage.

(a) *General requirements.* (1)(i) For cigarette production for each calendar year beginning with calendar year 1994, the Director shall determine for each domestic manufacturer the percentage

that domestic tobacco constitutes of the total tobacco used by that manufacturer to produce cigarettes in the United States. If such percentage use of domestic tobacco does not equal or exceed the domestic content nonassessment percentage for that calendar year, the manufacturer shall be deemed to have a domestic assessment use shortage and shall pay an assessment in the amount specified in § 723.503 and shall make compensatory tobacco purchases in the amount specified in § 723.504.

(ii) For any calendar year, the domestic content nonassessment percentage shall be 75 percent unless for that calendar year the percentage is reduced under § 723.505, in which case the domestic content nonassessment percentage shall be such reduced percentage.

(iii) Any assessment or purchase requirement which shall follow in the event of a domestic assessment use shortage shall be in addition to any other assessment or obligation that may be due or imposed.

(2) Any tobacco that has been reconstituted, or otherwise processed to the extent that it has lost its respective identity as either domestic tobacco or imported tobacco, shall be considered to be foreign tobacco when making determinations under this subpart.

(3) Any tobacco otherwise subject to paragraph (a)(2) of this section which is purchased by the manufacturer from a broker or processor may nonetheless be considered to be domestic tobacco by the Director if a valid certification meeting the requirements of this section and satisfactory to the Director is signed by the transferring party.

(4) In order to be credited under paragraph (a)(3) of this section, a certification must conform to all requirements imposed by the Director which may include use of a prescribed form.

(5) If the Director has not prescribed a form for use for such certifications, it shall be the responsibility of the domestic manufacturer to ensure that a proper certification has been obtained on a form devised by such manufacturer. In order to be valid for purposes of this section, the certification so devised must:

(i) Specify the total amount of tobacco being transferred to the domestic

manufacturer by the certifying party and the amount of such tobacco which is domestic tobacco;

(ii) Certify, except as provided in paragraph (a)(6) of this section, that such domestic tobacco was purchased directly from a domestic producer (at auction, directly or from the price support inventory of the applicable association) at market rates for domestic tobacco, and that the certifying party can demonstrate the actual disbursement of the purchase price.

(iii) Certify that the certifying party has no reason to believe that the tobacco certified as domestic tobacco is foreign tobacco;

(iv) Refer to this subpart and section 320C of the Agricultural Adjustment Act of 1938 and state the purposes for which the certification is requested and made;

(v) State that the certification involves material information which may or will be relied upon by the United States government for purposes of enforcement of the provisions of this subpart;

(vi) State that false or inaccurate information may lead to civil or criminal penalties or sanctions under the provisions of 18 U.S.C. 1001 or other provisions of law.

(6)(i) If any such certifying party has not purchased the tobacco from a domestic producer or the price support inventory of the applicable association, the certifying party shall be required in lieu of the requirements of paragraph (a)(5)(ii) of this section to attach a certification from the party from whom the certifying party obtained the tobacco. Such sub-certification shall conform to the provisions of paragraph (a)(5)(i) through (a)(5)(vi) of this section. Additional sub-certifications shall be required as needed to trace the tobacco back to the domestic producer.

(ii) In the event that such certifications as are otherwise required in order to treat tobacco as domestic tobacco cannot be reasonably obtained, the Director may relieve the domestic manufacturer from such requirements based on such representations of the origin category of the tobacco as the Director finds sufficient to serve the purposes of this subpart.

(7) The domestic manufacturer shall be required to maintain all records as may be needed to establish the origin of tobacco taken into inventory including any certifications regarding such origin.

(8) Any tobacco having lost its identity with respect to its origin category during the manufacturing process but which in the normal course of business is recaptured and reused by the same manufacturer to manufacture cigarettes in the United States and any tobacco in any cigarettes returned to the manufacturer of the cigarettes which is reused by the same manufacturer to manufacture new cigarettes in the United States shall not be counted toward the domestic content calculations made under this subpart. The domestic manufacturer shall maintain such records that show the quantity of tobacco so reclaimed or reused in the manufacturing of cigarettes for the calendar year. However, any tobacco reused by a manufacturer different than the original manufacturer shall be counted toward the domestic use calculations for both manufacturers.

(b) *Year-end reports required to be made by manufacturers.* (1) In addition to any other reports required by this subpart, beginning with the 1994 calendar year, a domestic manufacturer of cigarettes shall report to the Director, for each calendar year, the following information:

(i) The total quantity of tobacco used by the manufacturer to produce cigarettes in the United States during such calendar year.

(ii) The total quantity of imported tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iii) The total quantity of domestic tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iv) The total quantity of tobacco reused in the production of cigarettes during such calendar year that was reclaimed from the manufacturing process or from returned cigarettes and is exempt from counting toward the total final domestic use calculation for the

manufacturer under paragraph (a)(8) of this section.

(v) The total number of individual cigarettes produced during such calendar year.

(2) For purposes of the information required to be reported by paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the quantities reported shall be based on the packed, redried weight of the tobacco when it is removed from inventory for immediate entry into the manufacturing process for making cigarettes. The weights required for paragraph (b)(1)(iv) of this section shall be the actual weight of the reclaimed tobacco.

(c) *Where and when to report.* The reports required by this subpart shall, unless otherwise specified in this subpart, be mailed or otherwise delivered in hard copy to the Director, Tobacco and Peanuts Division, Farm Service Agency, USDA, P. O. Box 2415, Washington, DC 20013-2415 by February 15 of the year after the calendar year to which the report applies. The Director may specify the form in which any report required by this subpart shall be made and may make other requests for information as may be necessary to effectively enforce the provisions of this subpart.

(d) *Failure to report.* A manufacturer who fails to report the quantities of domestic and imported tobacco used for manufacturing cigarettes shall be presumed to have used only imported tobacco in such cigarettes. In addition, with respect to any recordkeeping or reporting requirement imposed by this subpart, the failure to file any report timely or to supply any required information shall permit the Director to determine that the information not timely filed or supplied is adverse to the party responsible for the submission and to make determinations under this subpart accordingly by any method determined reasonable by the Director. If the correct and verifiable information is later submitted, the Director may, in lieu of drawing such conclusions, assess the costs incurred as a result of the failure to supply the information in a timely manner.

§ 723.503 Domestic content marketing assessment.

(a) *General.* Effective beginning with the 1994 calendar year, each domestic manufacturer of cigarettes with a domestic assessment tobacco use shortage for a calendar year shall pay to CCC a non-refundable domestic marketing assessment under this section in an amount which equals the product calculated by multiplying the amount in pounds of the shortage by the assessment rate per pound calculated under paragraph (b) of this section.

(b) *Assessment rate.* The domestic marketing assessment rate for purposes of this section shall be determined separately for each calendar year. The assessment rate shall be the difference per pound between:

(1) One-half the sum of the average prices per pound received by domestic producers of burley tobacco and flue-cured tobacco, respectively, for their respective marketing years preceding the calendar year of the domestic assessment use shortage, and,

(2) The average price per pound of unmanufactured imported cigarette tobacco for the calendar year preceding the year of the shortage.

(c) *Data used to calculate market prices.* The Director may use data published by NASS for purposes of making market price determinations under this section and may use a weighted average price of unmanufactured cigarette tobacco which was imported during the previous calendar year, as calculated from Bureau of Census data, for such calendar year. The Director may make adjustments in the average prices or weights used to determine the domestic marketing assessment rate as determined appropriate by the Director to ensure that the average prices used for both domestic and imported tobacco are on an equivalent basis to the extent practical. Such adjustments, if any, shall be based on historical conversion yields common to the tobacco trade and may include the exclusion of cigar tobacco from the calculation of the average import price or the exclusion of other non-cigarette tobacco from such calculation.

(d) *Time for paying assessment.* The domestic manufacturer shall pay the domestic marketing assessment provided

for in this section within 30 calendar days after demand for payment. However, if the manufacturer timely requests reconsideration or timely appeals the determination, the time for payment of the amount in dispute may be extended by the Director to a date no later than 30 calendar days after the final determination is rendered. Such extensions shall be subject to such conditions as the Director may impose and shall be subject to a continued accrual of interest, unless otherwise specified by the Director. The rate for such interest shall be the rate charged on any obligation owing to CCC at the time of the assessment, as determined by the Director.

(e) *Failure to timely pay assessment.* If a domestic manufacturer fails in a timely manner to pay any assessment under this section, such manufacturer shall be subject to a penalty in an amount equal to twice the amount of the initial assessment in addition to any interest that has accrued on such obligations and in addition to any other charges or obligations that may apply.²

(f) *Interest.* All sums due to CCC under this subpart shall accrue interest at a rate of interest which the Director determines is currently being assessed for any other obligations due CCC. Such charges shall be in addition to any other charges due.

§ 723.504 Required purchases from tobacco loan stocks.

(a) *General.* In addition to paying a domestic marketing assessment, each domestic manufacturer of cigarettes who for any calendar year beginning with the 1994 calendar year has a domestic assessment use shortage shall purchase a quantity of burley and flue-cured tobacco from the loan stocks of the producer owned cooperative marketing associations for burley and flue-cured tobacco in the amounts prescribed in this section.

(b) *Purchase quantity.* The amount of tobacco that must be purchased shall be an amount equal to the amount, in pounds, of the manufacturer's domestic assessment use shortage. The total amount of required purchases shall be divided equally between burley and flue-cured tobacco. If it is determined